

Colorado Water Congress  
State Affairs Committee Meeting  
Report prepared by Bruce Whitehead  
Sponsored by the Southwestern Water Conservation District

**March 28, 2016 Water Legislation Report #11 (2016 Legislative Session)**

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The State Affairs Committee met on Monday, March 28, 2016 to review bills as introduced or amended and other proposed legislation. The Second Regular Session of the Seventieth General Assembly convened on January 13, 2016, and is scheduled to adjourn on May 11, 2016. The next meeting of the State Affairs Committee is scheduled for **Monday, April 4, 2016.**

Other legislation introduced, or requested for discussion or action since the last meeting: **SB 167 (Severance Tax Operational Fund Reserve Reduction).**

Proposed Legislation: **Work on budget “Long Bill” in the House to begin this week 3/28.** There has been a 70% reduction in Severance Tax revenues. It is anticipated that there will additional cuts needed of \$60 million to \$100 million on top of \$70 million in cuts already proposed to balance the budget. The **CWCB “Projects Bill”** will likely be introduced this week. *(Note: **SB174** was introduced on Monday afternoon after the SA meeting, so no discussion or position has been taken by the Water Congress on the bill. It has already been scheduled for the Senate Ag Committee on Thursday 3/31.)*

Discussion of Bills with CWC Position: An update was provided on **HB 1283 (Water Loss Audit Report Standards)**, which Water Congress has taken a position of Opposition on. The bill was heard in the House Ag Committee on March 7 with extended testimony. A vote on the bill was postponed by the Chairman, of the House Ag Committee, and the bill sponsor announced it is not on the Committee calendar due to additional work being done on the legislation. An update was also provided on **HB 1109 (Application of State Water Law to Federal Agencies)**, and it appears that there has been compromise language regarding permitting and bypass flows that the Colorado Attorney General’s office has agreed to. Water Congress had conditionally supported this bill pending resolution of this issue. Representative Arndt provided an update on **HB 1392 (Water Banks Administration)** and the work done by the State Affairs sub-committee. A request has been made by the SWCD and River District to exclude West Slope Water Divisions (4, 5, 6, and 7) from this legislation since it is premature for the Colorado Water Bank that has been under development for a number of years.

Ballot Initiatives: **Initiative 40** and **Initiative 63** are similar to ballot measures that have been previously proposed, and are partly driven by Oil/Gas production and hydro-fracking. Initiative 40 is focused on local jurisdiction and local sovereignty. On Monday March 14, the State Affairs Committee recommended a position of **Opposition** to Initiative 40 to the Water Congress Board. Initiative 63 is similar to past attempts at an “Environmental Rights Measure,” but has had the Public Trust issue removed from the language. The Titles have been approved for both of these Initiatives. These proposed measures could have impacts to water rights and water providers in the state.

There have also been a number of Initiatives that have had the Title set that would increase the requirements for ballot initiatives in Colorado. **Initiative 87** would require preparation of a Fiscal Impact Statement for proposed Initiatives, **Initiatives 93 and 94** are specific to Constitutional Amendments and would increase the number of votes needed for a Constitutional Amendment from 50% to 55%. **Initiatives 95, 96 and 97** are specific to Constitutional Amendments and would not change the total number of signatures required but would require that the signatures include 2% of the registered voters in each Senate District. The State Affairs Committee will consider making a position recommendation to the Water Congress Board on Initiatives 87, and 93-97 at the next meeting on March 14. Although the State Affairs Committee is supportive of the concepts to make it more difficult to change Colorado’s Constitution, the Committee decided to wait to make a recommendation to the Water Congress Board on these Initiatives until they know which version will be pursued by the proponents. More information can on proposed ballot initiatives can be found on the Colorado Water Stewardship Project web page at <http://cowaterstewardship.com/>

Click on the following links to read the full ballot initiative language:

[Initiative 40](#) (Oppose)  
[Initiative 63](#)

[Initiative 87](#)  
[Initiative 95](#)

[Initiative 93](#)  
[Initiative 96](#)

[Initiative 94](#)  
[Initiative 97](#)

The format of each bill includes five columns and a following **Summary** cell. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, & 5<sup>th</sup> column each contain two information items as follows: 1<sup>st</sup> column has both the **Bill No.** and the **Short Title**. The 2<sup>nd</sup> column has both the **Sponsors** and the assigned **Committee**. The 3<sup>rd</sup> column contains only the **Concerning** statement, copied directly from the bill. The 4<sup>th</sup> column will show important **Amendments** and **Comments** provided by either me or John Porter. The 5<sup>th</sup> column shows both **When Introduced**, **CWC Action**, and **SWCD Position**. Once a bill no longer requires SA Comm action I will include it in a summary table, which will also show its progress. Until CWC takes action, the bill will remain in this format. I will however, **highlight in yellow** changes in any of the cells, compared to the prior report. Once, CWC has acted on a bill, I will move it to the **Status table**, where its’ progress can be more easily monitored.

If you are aware of other entities that would like to receive these reports, please contact the Southwestern Water Conservation District office at 970-247-1302 with e-mail contact information.

Once introduced, copies of bills are available at [www.leg.state.co.us](http://www.leg.state.co.us).

Additional info is available at the CWC web site: <http://www.cowatercongress.org/stateaffairs/>

FYI: Legislator Contact Information

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Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action / SWCD Position
<p><b>HB16 – 1382</b></p> <p><b>Divert Water Piscatorial Aesthetic Beneficial Use</b></p>	<p><b>H Becker</b></p> <p><b>Ag, Livestock &amp; Natural Resources</b></p>	<p>CONCERNING THE CONFIRMATION OF CERTAIN USES OF WATER AS BEING BENEFICIAL</p>	<p><i>Postponed action on bill until Monday 4/4. The bill sponsor will likely PI the bill (Postpone Indefinitely) and request that the issue be referred to the Interim Water Committee this summer.</i></p>	<p><b>03/16/16</b></p> <p><b>DISCUSSION</b></p> <p><b>SWCD Position: Support with removal of aesthetic use</b></p>
<p><b>SUMMARY:</b> In the case of St. Jude's Co. v. Roaring Fork Club, LLC, 351 P.3d 442 (Colo. 2015) (St. Jude's Co.), the Colorado Supreme Court held that diversions of water for aesthetic, recreational, and piscatorial purposes, without impoundment, are not beneficial uses of water under Colorado water law.</p> <p>The bill <b>supersedes</b> the court's holding in St. Jude's Co. by:</p> <ul style="list-style-type: none"> <li>*diversion or release from storage of water for any purpose for which an appropriation is lawfully made, including piscatorial, recreational, and aesthetic purposes; and</li> <li>*Confirming that decrees entered before, on, or after the effective date of the bill for such beneficial uses shall be given full effect and enforced according to their specific terms.</li> </ul>				
<p><b>HB16 – 1392</b></p> <p><b>Water Banks Administration</b></p>	<p><b>H Arndt/Vigil S Crowder</b></p> <p><b>Ag, Livestock &amp; Natural Resources</b></p>	<p>CONCERNING THE ADMINISTRATION OF WATER BANKS.</p>	<p><i>Concerns expressed that this may be premature for West Slope-Colorado River Water Bank. Subcommittee formed to work on the legislation. Request made to exclude Divisions 4,5,6, and 7.</i></p>	<p><b>03/17/16</b></p> <p><b>DISCUSSION</b></p> <p><b>SWCD Position: Oppose as drafted</b></p>
<p><b>SUMMARY:</b> The bill provides water banking throughout the state by authorizing the Colorado water conservation board (board) to adopt rules establishing a water bank and authorizing the board, after the board has operated the water bank for at least 2 years, to delegate operation of a portion of the water bank to a water conservation district or a water conservancy district that chooses to operate a portion of the water bank and has demonstrated to the board's satisfaction that it can effectively operate a portion of the water bank.</p> <p>The board's rules <b>must</b> allow a person to deposit water for renewable periods of up to 10 years each. The board's rules must limit the amount of water a person may deposit into the water bank to depositing all of the water subject to a decree for up to 3 years in any consecutive 10-year period or depositing up to 30% of the water subject to the decree in any consecutive 10-year period. The board's rules must also prohibit a lease, loan, or trade of water from the water bank that would negatively affect an interstate obligation or result in transferring water out of the Rio Grande or Arkansas River basins or across the continental divide.</p> <p>As part of the application process that the board is <b>required</b> to establish by rule, the board, in conjunction with the state engineer, shall develop a streamlined process by which a person may calculate the historical consumptive use and return flows of the person's water right and any potential material injury arising from a deposit of water from the person's water right. The state engineer will use the streamlined process to certify water deposit applications.</p> <p>Individual water bank transactions <b>will not require</b> water court approval. However, the board's rules governing the water bank will be published before becoming effective, and a person may protest the board's rules in a water division designated by the Colorado supreme court in the same manner that a person would protest a water referee's ruling in water court.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action / SWCD Position
<b>SB16 – 167</b>  Severance Tax Operational Fund Reserve Reduction	S Grantham H Rankin  Appropriations	CONCERNING A REDUCTION IN THE SEVERANCE TAX OPERATIONAL FUND RESERVE FOR THE 2016-17 FISCAL YEAR.	<i>Joint Budget Committee bill                      would help offset negative                      funding impact to Tier II                      programs (including WSRA) by                      \$2.98 million.</i>	03/21/16  DISCUSSION  SWCD Position: N/A
<b>SUMMARY:</b> For a given fiscal year, the reserve in the severance tax operational fund is equal to the sum of the operating appropriations for the Tier I programs and 15% of the Tier II transfers. For the 2016-17 fiscal year, the bill reduces the portion of the reserve that is based on the Tier I programs by \$2.98 million.				